

**PATENT**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re the Application of: David L. Churchill  
Application No.: 10/677,578  
Filing date: October 2, 2003  
Title: Microminiature Gauging  
Displacement Sensor

Docket No.: 115-007  
Date: September 17, 2010  
Group Art Unit: 2862  
Examiner: Kenneth Whittington

**Petition Under 37 CFR 1.183**

Commissioner for Patents  
PO Box 1450  
Alexandria, VA 22313-1450

Sir:

This petition is to apply for additional patent term adjustment after payment of the issue fee. Applicant believes that applicant is entitled to an additional 3 years, 3 months and 23 days of patent term adjustment. Here are the facts:

The present patent application was filed on October 2, 2003.

Applicant's attorney paid the issue fee on August 19, 2010.

Applicant's attorney had never previously questioned a PTO determination of patent term adjustment and trusted the PTO to correctly determine patent term adjustment. Applicant's attorney was not aware of the rule under 37 CFR 1.705(b) requiring applying for adjustment no later than the payment of the issue fee. (Applicant's attorney would note that nothing in the notice of allowance or in accompanying papers indicates a need to apply for adjustment before paying the issue fee.) Under this petition applicant's attorney is applying for patent term adjustment about one month after the payment of the issue fee.

On September 16 applicant's attorney received the issue notification which provided a diminished patent term adjustment from the 33 days indicated in the notice of allowance. Applicant called the PTO and discussed patent term adjustment rules with USPO attorney Kery Fries. Applicant learned from Mr. Fries about the difference in the treatment for patent term adjustment of (a) withdrawal from holding of abandonment and (b) revival from abandonment and that the PTO may have erroneously treated this patent application in this regard in calculating the patent term adjustment .

Applicant's attorney had responded to the office action before the application went abandoned and petitioned to restart the statutory period for reply on October 10, 2006.

A copy of the letter from the PTO dated May 17, 2010 granted the petition and is attached. The letter states, "The Request for Reconsideration is being treated as a petition under 37 CFR 1.181 requesting withdrawal of the holding of abandonment and accepting the reply filed October 10, 2006 as being timely filed."

In the present case applicant did not petition to revive. Mr. Fries indicated that the patent term adjustment appears to have been erroneously determined based on the view that the application had instead been revived.

The assignee of the patent application, MicroStrain, Inc. employs approximately 50 people and is located in Williston, Vermont. MicroStrain manufactures sensors.

One of the inventors of the patent application, Steve Mundell, who works for MicroStrain, Inc., stated in an email that "this sensor is currently in production and this embodiment is the most popular version of our displacement sensors."

Applicant's attorney requests review of the patent term adjustment and believes that in view of the error in the PTO's treatment of the granting of the petition to withdraw holding of abandonment in determining the patent term adjustment and in view of applicant's attorney's admitted inexperience in this area justice requires such review.

If there are any questions please call applicant's attorney at 802 864-1575.

Respectfully submitted,  
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/James Marc Leas/

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